IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	I.D. No. 0509005223
	)	
AURELIO BURTON,	)	
Defendant.	)	

SUBMITTED: March 24, 2006
DECIDED: April 18, 2006

UPON DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL
DENIED.

Paul R. Wallace, Esquire, Wilmington, Delaware, for the State.

Joseph M. Bernstein, Esquire, Wilmington, Delaware, attorney for the Defendant.

ABLEMAN, JUDGE

On February 27, 2006, the Defendant Aurelio Burton (hereafter "Burton") was convicted by a jury of Burglary Second Degree, Resisting Arrest and Offensive Touching. After trial, Defendant timely filed a "Motion for Judgment of Acquittal as to the charge of Burglary 3rd and Enter a Conviction of the lesser-included offense of Criminal Trespass First Degree." Having considered the evidence at trial, the arguments in the motion, and the State's response thereto, the Court concludes that the Motion for Judgment of Acquittal must be denied, for the reasons set forth hereafter.

Factual Background

The charges in this case stem from an incident that occurred on September 7, 2005, when Burton was observed sitting on the steps of a home at 802 N. Monroe Street, Wilmington, Delaware, by two officers working with the Governor's Task Force/Safe Streets Project. The officers, Probation Officer William H. DuPont ("DuPont") of the Bureau of Community Correction, and Detective David Rosenblum ("Rosenblum") of the Wilmington Police Department, were traveling on Monroe Street at about 9:00 p.m. to investigate a complaint of a known probation absconder who was allegedly selling drugs from the stoop on which Burton sat with another male.

At the time of this incident, Burton had five separate pending capiases or warrants that had been issued for him during the previous two months. As the officers' unmarked car approached, Burton and the second individual, whom the officers immediately recognized as the wanted probationer, rose from the steps and began to run. Detective Rosenblum got out of the car and pursued the two on foot through an open lot and toward an alleyway that led to the parallel Morrow Street. Officer DuPont remained in the vehicle and drove around the corner to Morrow Street where he saw Burton crouched behind a vehicle. Upon seeing Officer DuPont, Burton again took flight, passing in front of Officer DuPont's vehicle and across Morrow Street toward the backyards of homes on N. Madison Street. In an attempt to prevent Burton's exit from the backyards, Officer DuPont left his car and ran to an adjoining backyard. While there, Officer DuPont heard a female screaming and looked to the back steps of 829 N. Monroe Street. There he saw a physical struggle between Burton and Takesha Sessoms, who resided at that address. DuPont specifically heard Burton say "the cops are after me." Robin Sessoms was in the kitchen of her home on 829 N. Monroe Street as Burton tried to push his way into the home, past her niece, Takesha Sessoms, in an effort to avoid capture by the police. She too heard Burton's statement.

Burton eventually shoved Takesha aside, entered and ran through the home and out the front door. By the time Officer DuPont reached the back door of 829 N. Monroe Street, Burton had already entered. DuPont observed several frightened children crying. The Sessom women were begging him to follow Burton. Officer DuPont saw Burton leave the home through the front door. By the time he reached the front of the house, Burton was hurriedly climbing into the back seat of a car that was idling on Madison Street. At that point Officer DuPont arrested Burton and took him into custody.

Discussion

If a jury returns a verdict of guilty in a criminal case, a Motion for Judgment of Acquittal may be made or renewed within seven days and the Court may, if appropriate, set aside the verdict and enter a judgment of acquittal. In deciding such a motion, the Court must consider the evidence and all legitimate inferences to be drawn therefrom from the point of view most favorable to the State. In light of this standard of review of the evidence, "[a]cquittal is appropriate only when the State has presented insufficient evidence to sustain a guilty verdict." Thus, the focus of the Court's inquiry must be whether there was sufficient evidence presented by the State for the jury to find that defendant acted "with intent to commit a crime, i.e. resisting arrest, when he entered 829 N. Madison Street."

Burton argues that the Court should focus upon "whether the offense [of resisting arrest] is a 'continuing offense', which is not completed until the suspect is apprehended or ceases his resistance, or whether the offense was 'completed' the moment that Burton fled from the officers." In support of this argument Burton relies heavily upon other states' judicial construction of their escape statutes.[1]

Burton submits that he cannot be guilty of the offense of Burglary Second Degree because that offense requires the State to prove that he knowingly entered or remained unlawfully in a dwelling with the intent to commit the crime of Resisting Arrest therein, "by fleeing from the officer(s) or otherwise attempting to evade being placed in custody." Burton contends that, since the offense of resisting arrest was already completed before he decided to enter the Sessoms residence, he could not, as a matter of law, have afterwards intended to commit the crime of Resisting Arrest. To support this argument, Burton alleges that the offense of resisting arrest is not a continuing offense but one that was completed the moment Burton fled from the officers. Therefore, the reasoning goes, Burton had already executed the offense of resisting

[1]Defendant's brief relies upon Florida law in citing *Gaskin v. Florida*, 869 So.2d 646, 647-648 (Fla. App. 2004), Texas law in the case of *Lawhorn v. State*, 898 S.W.2d 886, 889-892 (Tex. Crim. App. 1995), and Arkansas case law set forth in *Williams v. State*, 67 W.3d 548, 556-557 (Ark. 2002).

arrest before he entered the residence, so he cannot, as a matter of law, be convicted of Burglary Second Degree.

The Court disagrees with defendant's analysis of the elements of resisting arrest and with his focus upon whether resisting arrest is a continuing offense rather than simply upon whether there was sufficient evidence to support the jury's verdict.

The first flaw in defendant's reasoning is his failure to acknowledge that escape is a crime that is fundamentally dissimilar from resisting arrest. Escape requires only that a person be in physical custody and then break or depart from that custody without authorization.[2] The same is true under Delaware's criminal code.[3] That is, actions taken after the break or departure from custody are not relevant to the charge of escape -- there generally is no "continuous act" of escape. Resisting arrest, on the other hand, is a crime which, depending on the facts of the case, may be a continuing offense[4] or may be an offense that is completed on the happening of one event.

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[2]*See also Maynard v. State*, 652 P.2d 489, 492 (Alaska Ct. App. 1982) ("The offense of escape is complete when a person once in lawful custody, voluntarily removes himself from the custody without lawful authority."); *People v. George*, 109 Cal. App.3d 814, 819 (Cal. Ct. App. 1980) ("[Escape] is completed when the prisoner willfully leaves the prison camp, without authorization."); *Fitzgerald v. State*, 782 S.W.2d 876, 881 (Tex. Crim. App. 1990)("flight is not an essential element of the offense of escape because the offense itself is complete when an unauthorized departure from custody is made").

[3]DEL. CODE ANN. §1258(4)(2005)("'Escape"' means *departure* from the place in which the actor is held or detained with knowledge that such departure is unpermitted." – thus, under Delaware law the *actus* for escape is the departure).

[4]*See, State v. Wallace*, 745 A.2d 216, 219 (Conn. App. 2000), *cert. denied*, 753 A.2d 939 (Conn. 2000).

The evidence in this case provided sufficient basis to support the jury's finding that Burton's continuous evasion from the police was an offense that was not completed when he first took flight from them on Monroe Street. The continued flight by Burton that night cannot be parsed into several distinct acts unrelated to the jury's duty to determine whether Burton was "intentionally prevent[ing] or attempt[ing] to prevent a peace officer from effecting an arrest or detention" of him as charged.[5] Rather, the evidence demonstrated that Burton engaged in one continuous course of conduct when he knowingly and unlawfully entered the rear door of 829 N. Madison Street as he intended then to continue the crime of resisting arrest therein. Indeed, that was Burton's sole purpose in barging into the property that evening.

Burton next argues that whether a criminal statute should be interpreted as being a "continuing offense" is a matter of legislative intent. The Delaware Criminal Code contains several examples where the legislature intended to criminalize continued flight or continued evasion of arrest, such as escape after conviction, a Class D felony, unless the defendant inflicts injury upon another person during the escape, in which case it is a Class B felony. Burton contends that, because the resisting arrest statute has no additional or enhanced

[5]Del. Code Ann. Title 11, §1257 (2005).

punishment for acts committed during the "flight," as in the escape statute, the legislature could not have intended to criminalize continual flight or evasion of arrest.

The Court rejects defendant's proposed theory of legislative intent. In order to accept it, the Court would logically have to allow the State to pursue a new chargeable resisting arrest offense each time the defendant changed locales during the chase, took flight from Officer DuPont's visual field, or engaged in some other act in order to evade capture. If Burton had been so indicted, he would more than likely be able to successfully attack the charging of his case as violative of the multiplicity doctrine. Under that principle, the State may not split a single offense into more than one count by dividing the crime into a series of temporal or spatial units too connected to be logically separated.[6] Accepting Burton's theory of resisting arrest would mean that he could be charged for the original act of fleeing from the police on Monroe Street. He could also be charged for additional separate counts related to his later acts of resisting when the police again caught sight of him and he again took action to evade custody. If that is the case, one such act occurred on the back steps of 829 N. Madison Street. Burton's intent to avoid capture by the police was overheard by two witnesses who testified at trial that he stated he wanted to enter the home because "the cops are after me." Thus, even

[6] *Handy v. State*, 803 A.2d 937, 940 (Del. 2002).

accepting Burton's theory, there was sufficient evidence for the jury to have found that he knowingly and unlawfully entered 829 N. Madison Street with the intent to prevent his arrest or detention.

Conclusion

For all of the foregoing reasons, defendant Burton's Motion for Judgment of Acquittal is hereby **DENIED**.

IT IS SO ORDERED.

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PEGGY L. ABLEMAN, JUDGE